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9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12
13 PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 v.

16 BRIGGS & BAKER; INNOVATIVE SYSTEMS
TECHNOLOGY, INC.; TODD ALAN BAKER;
17 DARRIN BAKER; JOHN DAVID BRIGGS;
DARREN LEE ALBRECHT; JERRY EPSTEIN;
18 NELSON ROSS BOYLAN; ERNESTO MELO;
CARLOS M. GORDILLO; JUSTIN SCHERER; LUIS
19 ESPINO and DOES 1 through 75, inclusive,

20 Defendants.

Case No.:

COMPLAINT FOR INJUNCTION,
RESTITUTION, OTHER
EQUITABLE RELIEF, AND CIVIL
PENALTIES

21
22 Plaintiff, the People of the State of California, by and through Bill Lockyer, Attorney
23 General of the State of California, allege on information and belief:

24 **DEFENDANTS**

25 1. Defendant **BRIGGS & BAKER** is a business entity of unknown form. **BRIGGS**
26 **& BAKER** does business in San Diego County and elsewhere in California. Defendant
27 **INNOVATIVE SYSTEMS TECHNOLOGY, INC.**, is incorporated under the laws of the State
28 of California as a domestic corporation and does business under the fictitious business name of

1 **BRIGGS & BAKER.** Hereafter defendants **BRIGGS & BAKER** and **INNOVATIVE**
2 **SYSTEMS TECHNOLOGY, INC.,** will be jointly referred to as “**BRIGGS & BAKER.**”

3 2. Defendant **TODD ALAN BAKER** is sued in his individual capacity and in his
4 official capacity as an owner, president, chief executive officer, officer, director, principal, partner,
5 salesperson, employee and/or agent of defendant **BRIGGS & BAKER** and as such he has at all
6 relevant times directed and controlled the business activities of **BRIGGS & BAKER.**

7 3. Defendant **DARRIN BAKER** is sued in his individual capacity and in his official
8 capacity as an owner, officer, director, principal, partner, salesperson, employee and/or agent of
9 defendant **BRIGGS & BAKER** and as such he has at all relevant times directed and controlled
10 the business activities of **BRIGGS & BAKER.**

11 4. Defendant **JOHN DAVID (JACK) BRIGGS** is sued in his individual capacity
12 and in his official capacity as an owner, officer, director, principal, partner, salesperson, employee
13 and/or agent of defendant **BRIGGS & BAKER** and as such he has at all relevant times directed
14 and controlled the business activities of **BRIGGS & BAKER.**

15 5. Defendant **DARREN LEE ALBRECHT** is sued in his individual capacity and in
16 his official capacity as an owner, officer, director, principal, partner, salesperson, employee
17 and/or agent of defendant **BRIGGS & BAKER** and as such he has at all relevant times directed
18 and controlled the business activities of **BRIGGS & BAKER.**

19 6. Defendant **NELSON ROSS BOYLAN** is sued in his individual capacity and in
20 his official capacity as an owner, officer, director, principal, partner, salesperson, employee
21 and/or agent of defendant **BRIGGS & BAKER** and as such he has at all relevant times directed
22 and controlled the business activities of **BRIGGS & BAKER.**

23 7. Defendant **ERNESTO MELO** is sued in his individual capacity and in his official
24 capacity as an owner, officer, director, principal, partner, salesperson, employee and/or agent of
25 defendant **BRIGGS & BAKER** and as such he has at all relevant times directed and controlled
26 the business activities of **BRIGGS & BAKER.**

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1 8. Defendant **CARLOS M. GORDILLO** is sued in his individual capacity and in his
2 official capacity as an owner, officer, director, principal, partner, salesperson, employee and/or
3 agent of defendant **BRIGGS & BAKER** and as such he has at all relevant times directed and
4 controlled the business activities of **BRIGGS & BAKER**.

5 9. Defendant **JERRY EPSTEIN** is sued in his individual capacity and in his official
6 capacity as an owner, officer, director, principal, partner, salesperson, employee and/or agent of
7 defendant **BRIGGS & BAKER** and as such he has at all relevant times directed and controlled
8 the business activities of **BRIGGS & BAKER**.

9 10. Defendant **JUSTIN SCHERER** is sued in his individual capacity and in his
10 official capacity as an owner, officer, director, principal, partner, salesperson, employee and/or
11 agent of defendant **BRIGGS & BAKER** and as such he has at all relevant times directed and
12 controlled the business activities of **BRIGGS & BAKER**.

13 11. Defendant **LUIS ESPINO** is sued in his individual capacity and in his official
14 capacity as an owner, officer, director, principal, partner, salesperson, employee and/or agent of
15 defendant **BRIGGS & BAKER** and as such he has at all relevant times directed and controlled
16 the business activities of **BRIGGS & BAKER**.

17 12. Plaintiff is not aware of the true names and capacities of the defendants sued
18 herein as DOES 1 through 75, inclusive, and therefore sues these defendants by such fictitious
19 names. Each of said fictitiously named defendants is responsible in some manner for the
20 violations of law herein alleged. Plaintiff will amend this complaint to add the true names of the
21 fictitiously named defendants once they are discovered. Whenever reference is made in this
22 complaint to “defendants” or “Briggs & Baker” such reference shall include Does 1 through 75,
23 Todd Alan Baker, Darrin Baker, John David (Jack) Briggs, Darren Lee Albrecht, Nelson Ross
24 Boylan, Ernesto Melo, Carlos M. Gordillo, Jerry Epstein, Luis Espino, and Justin Scherer.

25 13. The violations of law alleged herein have been and are being carried out within
26 San Diego County and elsewhere in the state.

27 14. When reference in this complaint is made to any act or transaction of a defendant
28 corporation, company, association, business entity, or partnership, such allegation shall be

1 deemed to mean that said defendant and its owners, officers, directors, agents, employees, or
2 representatives did or authorized such acts while engaged in the management, direction, or
3 control of the affairs of defendants and while acting within the scope and course of their duties.

4 15. Whenever in this complaint reference is made to any act of any individual
5 defendant, such allegation shall be deemed to mean that said defendant is and was acting (a) as a
6 principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to
7 perform the acts so alleged on behalf of every other defendant herein.

8 16. Whenever in this complaint reference is made to any act of defendants, such
9 allegation shall be deemed to mean the act of each defendant acting individually and jointly with
10 the other defendants named in that cause of action.

11 17. At all times mentioned herein, each defendant knew or realized that the other
12 defendants were engaging in or planned to engage in the violations of law alleged in this
13 complaint. Knowing or realizing that other defendants were engaging in such unlawful conduct,
14 each defendant nevertheless facilitated the commission of those unlawful acts. Each defendant
15 intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and
16 thereby aided and abetted the other defendants in the unlawful conduct.

17 **DEFENDANTS' BUSINESS PRACTICES**

18 18. Defendants represent that they are in the business of debt management.

19 19. Defendants solicit clients by advertisements through radio, television, print,
20 telephone, Internet, and mail.

21 20. Defendants advertise debt reduction programs with names such as, but not limited
22 to, "Claims Management," "Immediate Settlement Program," "Fresh Start Immediate Program,"
23 "Fresh Start Payments Program," "Installment Program," "24 Month Credit & Debit Program,"
24 "Debt Amnesty Program," "Smart Payments," "Best Deal," and others.

25 21. Depending upon the program the client signs up for, defendants require some
26 clients to pay to Briggs & Baker as an up-front service fee a percentage of the client's outstanding
27 "enrolled" debt (those debts the client contracts with defendants to "manage" or "eliminate") and
28 allow some clients to pay defendants' service fee spread out over the duration of

1 the debt reduction program.

2 22. Defendants require some clients to pay a percentage of the client's outstanding
3 "enrolled" debt directly to an attorney as a retainer fee and/or an outside consultation fee.

4 23. Defendants require some clients to sign a legal services agreement with the
5 attorney who collects the retainer fee and/or outside consultation fee.

6 24. Defendants require their clients to sign a limited power of attorney granting
7 defendants the power to act on the client's behalf regarding banking and other financial
8 institution transactions and claims and litigation.

9 25. Depending upon the debt reduction program a client chooses to participate in,
10 defendants require their clients to either:

11 A. make monthly payments directly to defendants which monthly payments
12 are accumulated by defendants for the purpose of paying off the clients' debt.

13 B. make monthly payments directly to defendants, part of which payments
14 are to be disbursed monthly or quarterly by defendants to their clients' creditors for the
15 purpose of paying off the clients' debt.

16 C. make monthly payments directly to creditors according to a payment plan
17 negotiated by defendants.

18 D. write a personal check payable to each of the client's "enrolled" creditors
19 for 11% of the clients' outstanding debt with the creditor, which defendants claim will be
20 used by defendants to negotiate an "accord and satisfaction," as described below, with
21 each "enrolled" creditor.

22 26. Defendants' clients are usually advised they must cease making payments to their
23 creditors and to cease all contact with their creditors. Defendants' clients are usually given a
24 "script" to read to their creditors when the creditors contact the debtors.

25 27. Defendants' debt reduction program that uses "accord and satisfaction" operates
26 approximately as follows:

27 A. An intent to settle letter signed by an attorney is sent to each of the client's
28 "enrolled" creditors. The letter states that the attorney has been retained by the consumer

1 and based upon the consumer's report of various disputed items pertaining to the
2 consumer's account with the creditor, the attorney proposes to resolve the dispute by
3 way
4 of accord and satisfaction;

5 B. The intent to settle letter informs the creditor that a check, with a statutory
6 restrictive endorsement, for approximately 11 per cent of the debt will be mailed to the
7 creditor at the creditor's regular payment address. The letter further states that if the
8 creditor accepts the "settlement" check, the act of cashing the check is the creditor's
9 agreement to settlement in full for the amount of the check;

10 C. Defendants place the following restrictive endorsement on the back of the
11 client's personal checks: "THE ACCEPTANCE AND CASHING OF THIS CHECK/DRAFT
12 ACKNOWLEDGES AN ACCORD AND SATISFACTION AS PER MY LETTER DATED _____.
13 PAYMENT IN FULL AND FULL SATISFACTION OF THIS DISPUTED DEBT IS HEREBY
14 ACKNOWLEDGED PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1526. STRIKING OUT OF
15 THIS RESTRICTIVE ENDORSEMENT IS OF NO EFFECT.";

16 D. A short time after the defendants send the "accord and satisfaction" letter,
17 defendants mail the client's restrictively endorsed personal checks to the automated
18 payment processing center of each of the client's "enrolled" creditors.

19 FIRST CAUSE OF ACTION

20 VIOLATIONS OF BUSINESS AND PROFESSIONS CODE 21 SECTION 17500 (UNTRUE OR MISLEADING REPRESENTATIONS)

22 28. Paragraphs 1 through 27 of this complaint are incorporated herein as though set
23 forth in full.

24 29. Defendants, and each of them, have violated and continue to violate Business and
25 professions Code section 17500 by making or causing to be made untrue or misleading
26 statements with the intent to induce members of the public to buy defendants' services.
27 Defendants' untrue or misleading statements before the public in the State of California include,
28 but are not limited to, the following:

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1 A. Defendants’ advertisements represent that their programs have the ability
2 to provide clients with immediate debt elimination, when in fact many consumers who
3 become clients of defendants do not have their debt eliminated immediately or otherwise
4 because of defendants’ programs.

5 B. Defendants’ advertisements represent that consumers should “call now”
6 to “lock in the savings” on their “limited time offer,” when in fact no “limited time offer”
7 exists.

8 C. Defendants’ advertisements represent that defendants can settle credit
9 card debt, depending upon the advertisement, for pennies on the dollar, or for 11%, 25%
10 or 36% of the amount outstanding when in fact many consumers who become clients of
11 defendants do not have their credit card debt settled on the terms defendants advertise.

12 D. Defendants’ advertisements represent that because of their long-standing
13 relationships with most major banks they are able to leverage extreme discounts for their
14 client when in fact defendants do not have long-standing relationships with most major
15 banks that enable defendants to leverage extreme or predetermined discounts.

16 E. Defendants represent they “always get the most dramatic results by
17 offering the banks a ‘one time’ payment in exchange for a heavily reduced principle
18 [sic].” In fact, defendants’ offer of a one time payment in exchange for heavily reduced
19 principal is unlikely to be successful.

20 F. Defendants represent that 98% of the settlement offers they make to
21 creditors are accepted.

22 G. Defendants represent that in the rare instance that a settlement offer is
23 rejected and returned that the client can accept the creditor’s offer or a get a full refund
24 from defendants.

25 H. Defendants represent that their success ratio is among the highest in the
26 industry.

27 I. Defendants represent that their Fresh Start Immediate program works for
28 everyone.

1 J. Defendants represent that participation in their programs will improve
2 ones credit rating and that credit scores should go up during the course of the clients'
3 participation in defendants' programs.

4 K. Defendants represent that there has never been a better time
5 for consumers to renegotiate their credit accounts.

6 L. Defendants' advertisements represent that because of the war on terror
7 and the economic slowdown, credit card companies are offering their all-time best deals.

8 M. Defendants' advertisements represent that their programs provide an
9 incredible opportunity for consumers to eliminate their debt.

10 N. Defendants' advertisements fail to disclose that defendants do not
11 negotiate debt reduction for clients whose credit accounts are in good standing or that in
12 order for defendants' programs to have any chance of working, the clients' accounts must
13 be delinquent.

14 O. Defendants represent that four weeks after enrollment, the client's
15 settlement checks will be sent to each creditor. Defendants fail to disclose that if the
16 client's account with the creditor is not already delinquent, defendants will not send the
17 debtor's settlement check for 90 days or more and that during that 90 days or more period
18 defendants will not contact the clients' creditors.

19 P. Defendants fail to disclose that participating in defendants' programs
20 could cause the clients' accounts with creditors to go to collection and/or arbitration
21 and/or litigation.

22 Q. Defendants represent that they are able to "freeze" the clients' credit report
23 so that no derogatory information can be placed in it by an enrolled creditor.

24 R. Defendants represent to clients that six weeks after enrollment, when the
25 creditor receives the settlement check, that the creditor will update
26 the client's credit report to show that the account has been settled.

27 S. Defendants represent that a settlement check with a restrictive
28 endorsement that is cashed by the creditor is verification of the creditor's acceptance of

1 the full and final settlement of the account.

2 T. Defendants' advertisements fail to disclose that they will tell consumers
3 whose credit accounts are in good standing to stop making payments on such accounts so
4 that such accounts will become delinquent.

5 U. Defendants represent that their programs provide consumers with an
6 opportunity to get out of debt, but defendants fail to inform their clients that during the
7 time no payments to creditors are being made, creditors will add penalties and late fees to
8 the account balances and will often increase the annual percentage rate being assessed on
9 credit cards carrying the delinquent amounts.

10 V. Defendants represent that their programs provide consumers with an
11 opportunity to get out of debt, but defendants fail to disclose to those clients whose credit
12 payment history is good prior to signing up for one of defendants' programs that letting
13 defendants "manage" the clients' debt will result in additional debt and a reduced credit
14 rating. For those clients who had a poor credit history before signing up for one of
15 defendants' programs, defendants fail to disclose that letting defendants "manage" the
16 clients' debt will result in additional debt and an even worse credit history.

17 W. Defendants claim to be able to remove any derogatory remarks placed by
18 creditors on defendants' clients' credit history file.

19 X. Defendants' Legal Services Agreement provides that the client is entitled
20 to a refund of the settlement sum and the fees paid to the attorney if the creditor rejects
21 the accord and the debt is not extinguished by accord and satisfaction, when in fact
22 defendants seldom give refunds.

23 Y. Defendants' Legal Services Agreement provides that if the client is
24 "successful" in extinguishing the debt by accord and satisfaction but the creditor
25 continues collection activity, the "attorney agrees to perform all services necessary to
26 defend the lawful discharge of [the] claim, up to and including trial at no further costs to
27 client" when in fact when their clients complain of continued collection activity, the
28 attorney does not perform all services necessary to defend the "lawful" discharge of the

1 claim, up to and including trial.

2 Z. Defendants' intent-to-settle letter claims that the debtor has disputes with
3 certain items pertaining to the debtor's account when there is no reasonable basis for
4 making such claims.

5 AA. The intent-to-settle letter defendants send to creditors is misleading in that
6 each letter purports to list the items in dispute for each client, when in fact the disputes
7 listed are identical as to all creditors and as to all of defendants' clients.

8 BB. Defendants represent that defendants will give their clients a full refund if
9 defendants are unable to get a better deal than the client already has when in fact
10 defendants do not provide such full refunds as represented.

11 CC. Defendants represent that all their programs are 100% guaranteed to bring
12 a beneficial result to their clients' financial condition.

13 DD. Defendants represent that they are approved by the California Department
14 of Justice and are authorized by the State of California to act on behalf of their clients.

15 EE. Defendants represent themselves to be a Credit Services Organization
16 when not registered with the Department of Justice.

17 FF. Defendants represent that they provide efficient service and exceptional
18 customer support.

19 GG. Defendants fail to inform clients that defendants consider their fees fully
20 earned and defendants' job fully completed after defendants contact the "enrolled"
21 creditors and/or the creditor cashed the debtor's check.

22 30. Defendants knew or should have known at the time the statements set forth in
23 paragraph 29 were made that they were untrue or misleading.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATIONS OF CALIFORNIA BUSINESS**
3 **AND PROFESSIONS CODE SECTION 17200**
4 **(UNFAIR BUSINESS PRACTICES)**

5 31. Paragraphs 1 through 30 of this complaint are incorporated herein as though set
6 forth in full.

7 32. Defendants and each of them, have engaged in and continue to engage in the
8 following, among other, acts of unfair competition as defined in Business and Professions Code
9 Section 17200:

10 A. Defendants have violated Business and Professions Code section 17500 as
11 set forth in paragraph 29 of the First Cause of Action, which paragraph is incorporated
12 herein as though set forth in full.

13 B. In violation of Civil Code section 1770, subdivision (a), subsection (5),
14 defendants represent that their services have sponsorship, approval, characteristics,
15 ingredients, uses, benefits or quantities that they do not have.

16 C. In violation of Civil Code section 1770, subdivision (a), subsection (14),
17 defendants represent that the transaction their clients enter into with them confers or
18 involves rights, remedies, or obligations that it does not have or involve, or that are
19 prohibited by law.

20 D. Defendants violate Civil Code section 1789.10 *et seq.* in that they have
21 acted as a Credit Services Organization at times when they did not comply with the
22 requirements of such Act.

23 WHEREFORE, plaintiff prays for judgment as follows:

24 1. Pursuant to Business and Professions Code sections 17203 and 17535, that
25 defendants and each of them, personally or through their successors, agents, representatives,
26 employees, and any and all other persons who act under, by, through, or on behalf of defendants
27 be permanently restrained and enjoined from:

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A. Making or disseminating any of the statements set forth in this complaint or any other statement in violation of Business and Professions Code section 17500 *et seq.* relating to a debt management service business.

B. Doing any of the acts set forth in this complaint or any other act in violation of Business and Professions Code section 17200 *et seq.* relating to a debt management service business, including committing any violation of the Credit Services Act of 1984 (Code of Civil Procedure section 1789.10 *et seq.*).

2. Pursuant Business and Professions Code section 17206, that defendants and each of them be assessed a civil penalty of \$2,500.00 for each violation of Business and Professions Code section 17200 as proven at trial, but in an amount of not less than \$500,000.00.

3. Pursuant Business and Professions Code section 17536, that defendants and each of them be assessed a civil penalty of \$2,500.00 for each violation of Business and Professions Code section 17500 as proven at trial, but in an amount of not less than \$500,000.00.

4. That plaintiff have such other and further relief as the nature of the case may require and the court deems proper to dissipate the false or misleading statements and unlawful, deceptive or unfair acts complained of herein, including an order that defendants make full restitution of all money or other property that they may have acquired by their violation of Business and Professions Code sections 17200 and 17500.

5. That plaintiff recover its costs.

DATED: February 19, 2003

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of the State of California
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